

BILL # HB 2577

TITLE: immigration law; employment; enforcement

SPONSOR: Pearce

STATUS: Conference Engrossed

PREPARED BY: Jake Corey, Martin Lorenzo, and
Leah Ruggieri

FISCAL ANALYSIS

Description

The bill addresses several issues related to illegal immigration and immigration enforcement. Among the major policy changes, the bill:

- 1) Authorizes, to the extent permitted by federal law, peace officers to investigate or apprehend illegal immigrants, and requires local law enforcement agencies to enter into a Memorandum of Understanding with the federal government to designate officers as immigration officers;
- 2) Institutes a criminal offense of trespassing for illegal immigrants;
- 3) Provides for civil and criminal penalties against any employer who engages in unlawful employment practices as established by the bill;
- 4) Indemnifies the employer and requires the state to pay any actual costs incurred in the employer's defense for any charge brought by a former employee against an employer acting in good faith to comply with the bill;
- 5) Requires the Attorney General to enforce the employer provisions of the bill and annually audit up to 5% of employers issued a license, as well as 1 state agency and 1 political subdivision;
- 6) Authorizes the Governor to deploy the National Guard for an emergency due to unauthorized border crossings;
- 7) Requires the Arizona Department of Administration (ADOA) to verify the authorization for employment status of each state employee and each state contractor, once a Memorandum of Understanding has been reached with the federal government for Arizona's participation in the Basic Pilot Program;
- 8) Requires that the Department of Economic Security (DES) only provide child care services to citizens, legal residents, or other persons lawfully present in the United States;
- 9) Requires that the Arizona Department of Education (ADE) only provide Adult Education courses to citizens, legal residents, or other persons lawfully present in the United States;
- 10) Provides that the Universities and the Community Colleges shall not consider an illegal immigrant to be an in-state or in-county resident, nor shall an illegal immigrant be entitled to financial aid; and
- 11) Prohibits any state or local government entity that requires identification for services from accepting any identification document unless it was issued by a state or federal authority, a political subdivision, or a federally recognized tribe.

The bill also appropriates a total of \$136.6 million and 162.8 FTE Positions in FY 2007 and \$25 million in FY 2008. Federal monies shall be used to offset the appropriation, and the unused portion of the state monies shall revert to the General Fund.

Estimated Impact

The bill appropriates \$136.6 million in FY 2007, which is detailed in the table on the following page. Of this amount, \$9.0 million is already in the FY 2006 base budget. In FY 2008, the bill appropriates another \$25 million for the border radar system.

Beyond the specified appropriations, the bill could have broader consequences on both state revenues and expenditures. To the extent that increased security and enforcement would make it more difficult for illegal immigrants to enter and remain in the state, the level of illegal immigration would likely decline. Lower levels of immigration would reduce participation in state-funded programs, which would then affect spending.

Reduced immigration levels would also impact state revenues. The growth in general tax collections would decline with a reduced immigrant population. This reduction may be offset somewhat if wages increase to remaining residents in an attempt to offset the overall decline in the labor supply.

The magnitude of these broader revenue and spending impacts will depend on how much the bill affects the level of immigration, which cannot be determined in advance.

HB 2577 – FY 2007 Appropriations and Other Impacts	
	<u><i>Appropriations</i></u>
<u><i>Department of Public Safety</i></u>	
• GITEM Expansion (161.8 FTE Positions)	\$ 28,952,900 ^{1/}
• Southern Regional Crime Lab Construction	14,300,000
<u><i>Border Enforcement Security Team</i></u>	
• Grants to Counties for Incarceration Expenses	27,000,000
• Grants to Local Governments for Immigration Enforcement	27,000,000
<u><i>Attorney General</i></u>	
• Employer Violations and Audits	2,000,000
<u><i>Department of Emergency and Military Affairs</i></u>	
• National Guard Mobilization (Conditional Appropriation)	10,000,000
• Border Radar	25,000,000
<u><i>Arizona Department of Transportation</i></u>	
• Southern Arizona Border Road	1,000,000
<u><i>Department of Corrections/County Sheriffs</i></u>	
• Border Clean-up	850,000
<u><i>Legislative Council</i></u>	
• Immigration Ombudsman-Citizens Aide (1 FTE Position)	100,000
<u><i>Auditor General</i></u>	
• Federal Fiscal Audits Contract	150,000
<u><i>State Land Department</i></u>	
• Environmental Impact Study	200,000
Total Appropriations	\$136,552,900
 Other Policy Provisions	
	<u><i>Impact</i></u>
• DPS Fingerprinting	\$117,000 Cost
• Civil and Criminal Fines	Increased Revenue
• Good Faith Employer Indemnification	Increased Costs
• ADOA Employment Status Verification	Increased Costs
• Child Care Services Non-Residency Prohibition	Minimal Impact
• Adult Education Non-Residency Prohibition	Minimal Impact
• Higher Education Tuition and Financial Aid Restrictions	Potential Savings
 ^{1/} Of this amount, \$8,952,600 is already provided to DPS in FY 2006 as part of their base year budget.	

The Analysis and Local Government Impact sections address cost estimates of the bill by state agencies and local jurisdictions.

Analysis

Department of Public Safety/Local Law Enforcement

Currently, there are primarily 3 federal entities that enforce federal laws related to illegal immigration in the state of Arizona. These entities include the Immigration and Customs Enforcement (ICE) agency, the United States Customs and Border Protection (CBP) agency, and to a lesser extent the Federal Bureau of Investigation (FBI). However, HB 2577 would expand the enforcement to include state and local law enforcement agencies. Specifically, the bill would:

- Require state, county, and local police departments to enter into a Memorandum of Understanding with the United States Department of Justice or the Department of Homeland Security to designate local officers as immigration officers;

- Authorize peace officers in the state to enforce federal immigration laws, including their ability to investigate, apprehend, detain, or remove illegal immigrants to the extent permitted by federal law;
- Authorize peace officers to question a detainee's immigration status as long as the officer has detained the person for committing a crime or any other violation of law;
- Establish the act of questioning a detainee's immigration status by a peace officer as one that provides qualified immunity to the public entity and employee; and
- Prohibit individuals who are in violation of federal immigration laws related to unlawful entry from being awarded punitive damages in a court action in the state.

Based on the fiscal note for HB 2589, approximately 47,050 unauthorized immigrants are referred to federal authorities from local, state, tribal, and military entities on an annual basis. However, these estimates may be overstated to the extent that the unauthorized immigrants may have been charged with more than one immigration related violation and a portion of the referrals occurred in California.

HB 2577 would make it a class 1 misdemeanor, and a class 4 felony for subsequent violations, for individuals who enter into or are on public or private land in the state if they are in violation of federal immigration and naturalization laws addressing unlawful entry into the United States. An officer may not stop or arrest a person for this new law unless there is reasonable suspicion that the individual has committed or is committing a violation of another state or federal law. The arresting authority is required to fingerprint the offender and either transfer the person to the federal agency with jurisdiction or refer the offender for prosecution. DPS has indicated they require an additional fingerprint technician for every 20,000 increase in the number of fingerprints to be processed annually. Assuming DPS was responsible for inputting all 47,050 unauthorized immigrants' fingerprints into their data system, the department could potentially need an additional 3 positions at a cost of \$39,000 each, for an annual cost of \$117,000. A portion of these costs could potentially be offset from the monies appropriated to DPS for GITEM.

To address the potential for increased law enforcement associated with the bill, the bill appropriates \$28,952,900 and 161.8 FTE Positions to DPS to expand the Gang Intelligence Team Enforcement Mission into the Gang and Immigration Team Enforcement Mission (GITEM). The appropriation would provide an additional \$20 million and 100 FTE Positions to DPS for GITEM, since there is already \$8,952,900 in the FY 2006 base appropriation. Of the 100 FTE Positions, 50 are to be used exclusively for immigration and border security. The precise impact of the bill on DPS' law enforcement workload is unknown. As a result, it is difficult to determine in advance how actual costs will relate to the appropriation level.

DPS may also use the \$29.0 million appropriation to contract with a city, town, county or other entity to provide services for GITEM. The local entity shall provide 15% of the cost of the services and DPS would provide the remaining 85%. Given the \$9.0 million for base expenditures and funding for new staff, the remainder would be available for local law enforcement contracts.

DPS would also receive a one-time appropriation of \$14.3 million to fund the construction of a new southern Arizona crime laboratory. DPS operates and maintains 4 crime labs throughout the state including: the Central Regional Crime Lab, the Southern Regional Crime Lab, the Northern Regional Crime Lab, and the Western Regional Crime Lab. Services are provided to nearly 295 different agencies; however, the services at each of the 4 crime labs vary due to size and available resources. In recent years, the scientific analysis system has experienced a significant increase in the number of cases submitted for analysis; however, the majority of the growth in submissions has been attributed to southern Arizona. Specifically, the department has experienced an increase of 9,064 (or 261.9%) cases submitted to the Southern Regional Crime Lab since FY 2000.

The bill also appropriates \$27 million to the Border Security Fund in FY 2007 for grants to local law enforcement to offset the additional costs associated with the increased responsibilities. This amount is over and above any local assistance under the GITEM program. (*See Local Government Impact section for additional information.*)

The bill may generate additional revenue from misdemeanor and felony fines charged to illegal immigrants convicted of the additional immigration related laws established by the bill. A.R.S. § 13-801 and A.R.S. § 13-802 set the maximum fine for a misdemeanor and felony at not more than \$2,500 and \$150,000, respectively. However, an additional fine, to be determined by the court, ranging from \$50 to \$250 for the first violation and twice the amount for a subsequent violation of the trespass law, shall be levied by the courts and deposited into the Border Security Fund established by the bill. Revenues resulting from these fines are unknown at this time as the number of offenders charged, actual monetary penalties, collection rates, and case processing times cannot be determined.

Department of Corrections/Local Incarceration Expenses

The bill has the potential to increase the prison and local jail population. Those convicted under any of the additional laws established in the bill, including both illegal immigrants and employers, could be subject to various misdemeanor and felony charges which carry sentences ranging from 6 months to up to 5 years (depending on the charge) for a first offense. The Department of Corrections (DOC) currently estimates the daily costs to house a person in prison to be on average \$56.19. In FY 2005, DOC expended roughly \$86.3 million to incarcerate foreign nationals (immigration status has not been determined by ICE); however, they received roughly \$12.1 million through the federal State Criminal Alien Assistance Program (SCAAP) to offset a portion of the states costs. To address the impact on local jails, the bill includes \$27 million to be granted to counties for incarceration-related costs. The “incarceration” appropriation is separate from the \$27 million set aside for local law enforcement expenses. As with law enforcement, the bill’s precise impact on incarceration expenses is not known, and it is difficult to determine in advance how actual costs will relate to the appropriation. (*See Local Government Impact section for additional information.*)

Attorney General

The bill makes several changes to prohibit employers from employing illegal immigrants. The Attorney General is required to provide enforcement of these provisions. The Attorney General also must coordinate efforts with DES, the Industrial Commission of Arizona, and the Department of Revenue (DOR) to investigate employers that fail to make unemployment insurance contributions, secure workers’ compensation, or make state income tax withholdings. In addition, the Attorney General’s office is responsible for conducting an annual audit of employers issued a license by the state, county, city, or town to determine if an employer is employing any illegal immigrants. The bill allows the Attorney General to audit a maximum of 5% of licensed employers, including self-employed individuals, though it does not specify a minimum number of employers to be included in the audit. The bill requires at least 1 state agency and 1 political subdivision of the state to be included in the audit. The audit process includes the review of several items, including compliance with state and federal employment laws. The employment authorization of employees may be verified using the Basic Pilot Employment Verification Program.

The bill appropriates \$2 million to the Attorney General to implement these provisions. The main cost involves the employer audits. The bill does not mandate a minimum level of audits, but sets a cap of 5% of licensed employers. Based on certain workload assumptions, the Attorney General has estimated that the maximum 5% audit would cover 15,738 employers and require \$11.5 million and 115 FTE Positions. Given the bill’s lack of a minimum audit requirement, the staffing, however, could be adjusted to the \$2 million appropriation. By extrapolating the Attorney General’s workload estimates, this dollar amount could fund 23 FTE Positions. This staffing could cover 3,100 employers, which would be a 1% sample.

DES does not estimate any fiscal impact stemming from their role in investigative efforts, as they are only required to provide information and anticipate a low volume of cases. The Industrial Commission of Arizona and DOR have not provided any possible cost impacts.

In terms of other possible impacts, any civil penalties imposed against employers will be deposited into the Border Security Fund. In addition, if any action is brought against an employer by a former employee as a result of the employer’s good faith actions in compliance with the provisions of the bill, the state is required to verify and pay actual damages and costs, including attorney fees.

Department of Emergency and Military Affairs

The bill authorizes the Governor to mobilize the Arizona National Guard if the Governor declares a state of emergency due to unauthorized border crossings. If that occurs, the bill appropriates \$10 million from the General Fund to the Department of Emergency and Military Affairs (DEMA). According to DEMA estimates, \$10 million would fund 85 Guard personnel for one year.

The bill also establishes a Border Radar Fund to be administered by DEMA and appropriates \$25 million from the General Fund in FY 2007, and another \$25 million in FY 2008. DEMA shall use the monies to lease or purchase a border radar system. An estimate provided by a private contractor projects that \$50 million would cover a length of between approximately 500 and 650 miles.

Arizona Department of Transportation

The bill appropriates \$1 million to the Border Security Fund to be distributed to the Arizona Department of Transportation (ADOT). These monies are to fund the construction of unpaved border roads in southern Arizona.

Department of Corrections/County Sheriffs

The bill appropriates \$850,000 from the General Fund to the Border Security Fund in FY 2007 for grants to the DOC and county sheriffs for border clean-up restoration costs.

Auditor General

The bill requires the Auditor General, for each agency that it audits, reviews, or investigates, to conduct an audit for adherence to immigration employment practices. The bill also appropriates \$150,000 from the General Fund in FY 2007 for the Auditor General to contract with a third party to conduct any federally required fiscal audits.

Legislative Council

The bill establishes an Immigration Enforcement Citizens Aide Position. The purpose of the position is to provide employers with information to assist them in complying with immigration laws. The bill appropriates \$100,000 from the General Fund to Legislative Council in FY 2007 for the aide.

State Land Department

The bill appropriates \$200,000 from the General Fund in FY 2007 to the State Land Department to contract for a study of the effects of illegal immigration on the environment of state lands in southern Arizona border counties.

Department of Administration

The bill requires the ADOA to verify the immigration status of every state employee, and each contractor the state contracts with, through the Basic Pilot Employment Verification Program administered by the U.S. Department of Homeland Security. The provision, however, only applies to employees hired after a Memorandum of Understanding is reached for Arizona to participate in the Basic Pilot Program. Currently, Arizona does not participate in the program. The Basic Pilot Employment Verification Program has a minimum \$25 monthly usage fee, or an average \$0.27 per verification cost if monthly volume exceeds \$25. On an on-going basis, there would be a small cost to verify new state employees once Arizona reaches an agreement to participate in the program. The costs to verify the employment status of contractors with the state could be more extensive, depending on the number of employees working for companies that contract with the state.

Department of Economic Security

The bill limits DES to providing child care services to citizens, legal residents, or other persons lawfully present in the United States. Though child care assistance is an entitlement program, under its currently adopted set of rules and policies, DES requires an applicant for child care services to be a citizen or legal resident, and to verify proof of this status. Unless the new statutory language is interpreted to be a broader prohibition than current rules, this provision would appear to have minimal fiscal impact.

Arizona Department of Education

The bill makes immigration-related changes to current law pertaining to the Adult Education and Family Literacy programs in the ADE.

For Adult Education, the bill limits participation in the program to citizens, legal residents, or other persons lawfully present in the United States. For Family Literacy, the bill does not add a citizenship requirement, as one already exists for the program in A.R.S. §15-191(1)(a).

State funding for both programs would remain unchanged under the bill, as they are funded as discretionary grant programs rather than entitlements. Their funding levels, therefore, do not automatically fluctuate with changes in caseload. Family Literacy caseloads would not change under the bill because of its existing citizenship requirement. Adult Education caseloads potentially could decrease under the bill, but any decrease in non-citizen caseload for it would be offset at least in part by increased participation by U.S. citizens and legal residents, as a waiting list currently exists for the program.

Universities and Community Colleges

This bill restricts illegal immigrants from being categorized as in-state students and denies them financial aid from higher education institutions. This includes tuition waivers, grants, scholarship assistance, or any other form of assistance subsidized by the state. These sections also require community colleges and universities to report the number of students denied in-state residency and financial aid because of their residency status.

Currently, both universities and community colleges do not check for legal citizen status when admitting students. In verifying in-state residency, the universities and community colleges do request a social security number or relevant visa

status. It is difficult to determine the number of illegal immigrants currently attending the state's higher education institutions. To the extent that the bill reduces attendance, there would be a savings as state funding is at least partially based on enrollment.

Statewide Savings

The bill could generate state and local government savings to the extent it reduces costs associated with the unauthorized population. Federal law mandates that individuals who are not lawfully present in the United States are eligible to receive some benefits such as emergency medical care and elementary and high school public education. Some state share of the cost for these benefits may be reduced if the bill results in a reduction in this population or serves to discourage future unauthorized immigration.

Two recent studies have examined the cost of services provided to immigrants in Arizona. Based in part on a 1994 study by the Urban Institute, a 2004 report by the Federation for American Immigration Reform (FAIR) estimated that those individuals not lawfully present in the United States and their U.S. born children annually receive approximately \$1.3 billion in certain public funding and private hospital care. This cost estimate consists primarily of the federally mandated benefits of elementary and secondary education and uncompensated public and private health care. The FAIR study estimated the cost impact of elementary and secondary education at \$480 million for unauthorized immigrants' U.S. born children and \$330 million for non-U.S. born children. The report estimated the cost for uncompensated public and private health care at \$400 million. The FAIR report also included \$80 million in spending on incarcerated individuals.

A second report, by the Thunderbird American Graduate School of International Management in 2003, was not limited to the unauthorized population only. The report estimated that immigrants from Mexico to Arizona annually receive approximately \$250 million in public benefits. These numbers, however, are extrapolations of data from national studies, which may include the cost of federal programs. In addition, these national studies appear to estimate the net cost impact after adjusting for any taxes paid. It is unclear whether the Thunderbird estimates have adjusted the federal numbers to produce a gross pretax spending impact. The JLBC Staff has not attempted to reconcile the FAIR and Thunderbird estimates.

State Government Revenues

The bill may also affect state and local government revenue collections as unauthorized immigrants contribute to the state's economy and labor market. The estimate of tax collections received from this population varies. The FAIR report estimated that these individuals generated about \$257 million annually (about \$268 million in 2006 dollars) in state and local sales, income, and property tax revenues. The Thunderbird report estimated that Mexican immigrants paid approximately \$293 million in sales taxes (about \$321 million in 2006 dollars). The Thunderbird study did not estimate the amount of state income or property taxes paid by unauthorized individuals. The direct state revenue impact will depend on how the bill affects the state's overall level of immigration.

In addition to affecting tax collections, the level of immigration affects the labor market. Based on the Census Bureau's March 2002 Current Population Survey, the Urban Institute estimated that about 5% of all U.S. workers are not lawfully present. Arizona's labor force included approximately 300,000 of these workers, or about 11.5% of total employment in the state. According to the Thunderbird study, these individuals earned \$11,170 per year in 2000, (\$12,680 in 2006 dollars), about 39% of the average for all workers. The annual wages earned by this group are estimated to be about \$3.8 billion. This population tends to fill lower paying jobs. A decrease in this population may increase job opportunities for the remaining population or result in an increase in wages for these jobs if the overall labor supply declines. These secondary labor market impacts could also affect state revenue collections.

Local Government Impact

The bill would expand the enforcement of federal immigration laws to include state and local law enforcement agencies. To offset additional costs associated with the increased responsibilities, the bill establishes the Border Security Fund, consisting of gifts, grants, legislative appropriations, and revenues resulting from various fines established by this bill related to undocumented immigrants. The bill also establishes the Border Enforcement Security Team (BEST). BEST shall grant 50% of the monies in the Border Security Fund to city, town, and county law enforcement agencies to aid in combating illegal immigration, and the remaining 50% shall be provided to counties for incarceration costs. The bill appropriates a total of \$54 million from the General Fund to the Border Security Fund for distribution to local governments in FY 2007. Local governments are also eligible to receive a portion of the \$29.0 million appropriation to DPS. The bill's precise impact on local government workload is uncertain. As a result, it is difficult to determine in advance how actual costs will relate to the level of funding provided in the bill.

In terms of their existing costs, the Arizona Association of Counties (AAC) reported that counties expended \$39.6 million to incarcerate illegal immigrants in FY 2005. Of this amount, counties were reimbursed \$2.2 million in State Criminal Alien Assistance Program (SCAAP) monies.

To develop an estimate of their new costs under the bill, AAC surveyed County Sheriffs, County Attorneys and Justice of the Peace's in each of the 15 counties in Arizona on the estimated costs of the trespass law to Arizona counties. In the survey, some counties had estimates in the thousands of dollars, some in the millions of dollars, and some were unable to quantify the costs of the bill. At the upper end, Yuma County estimated its costs to be as high as \$96.1 million. In developing their costs estimate, the counties used different methodologies and assumptions. JLBC Staff has not attempted to validate any single set of methodologies or identify a uniform set of assumptions.

In addition to requiring county and local police departments to enter into a Memorandum of Understanding with the United States Department of Justice or Department of Homeland Security to designate local officers as immigration officers, the bill would require county sheriffs and local law enforcement agencies to implement a program by which peace officers in the state can be trained to investigate violations of federal immigration laws. Federal homeland security funding, or any subsequent source of federal funding, received by the state is to be used to fund the costs associated with programs for training peace officers, therefore, there is intended to be no costs to local governments.

Because the bill could impact local agencies that administer benefits, any potential costs and savings identified above also apply to local governments. Similarly, any of the economic costs and benefits described above would have effects both at the state and local levels.

6/5/06